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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7634 OF 2006

Satara Municipal Council Petitioner
versus
Dilip Purushottam Kasat Respondent

Mr.P.B.Shah for petitioner.
Mr.A.N.Jakhadi for respondent.

CORAM : A.S.OKA, J.

DATE : 06th March 2007

PC :

1. Rule. Advocate for the respondent waives service. Taken up for hearing forthwith.

2. The petitioner is the first defendant in a suit filed by the respondent. The suit was decreed ex-parte on 16th July 2003. An appeal was preferred by the petitioner along with an application for condonation of delay. By the order impugned in this petition under Article 227 of the Constitution of India, the application for condonation of delay has been rejected by the learned Ad-hoc District Judge, Satara by holding that the petitioner was negligent.

3. Learned advocate for the petitioner submitted that initially the Director of Town Planning and other two officers of the State Government were made parties to the suit and since the suit was relating to the reservation under a development plan, the petitioner was under an impression that the said officers will defend the suit. He pointed out that later on the names of the said officers were deleted and petitioner continued to be the only defendant. It is submitted that considering the nature of the decree, the delay ought to have been condoned. Learned advocate for the respondent opposed the petition by pointing out that the petitioner was served with the suit summons and thereafter a notice of the execution proceedings. After service of notice of execution proceedings, the petitioner took eight months time to apply for a certified copy of the decree and that is the reason why the Appellate Court had rightly held the petitioner to be negligent.

4. I have considered the submissions. The petitioner is a local authority. The petitioner is also a planning authority within the meaning of Maharashtra Regional and Town Planning Act,

1966. The decree passed in the suit declares that the suit property is free from the reservation and the reservation stands deleted. There is a mandatory injunction granted to remove the toilet block erected by the petitioner on the suit property. It appears that initially the Director of Town Planning, the Secretary-Urban Development Department and Deputy Director of Town Planning were impleaded as the defendants. Their names were subsequently deleted by the respondent. It is true that there is some delay on the part of the petitioner in applying for the certified copy after the petitioner was served with the notice of the execution application. An occasion for filing an application for condonation of delay arises only when there is some default on the part of a litigant. Considering the fact that the petitioner is a planning authority and considering the averments made in the application for condonation of delay, in my view, delay deserves to be condoned subject to payment of heavy costs. Considering the facts and circumstances of the case and the span of delay involved, the amount of costs is quantified at Rs.15,000/-. Hence I pass following order.

5. ORDER :-

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a) The impugned order dated 2nd September 2006 is quashed and set aside;

b) Miscellaneous Application No.279 of 2004 is allowed subject to petitioner depositing with the Appellate Court a sum of Rs.15,000/- (Rs.Fifteen thousand only) towards costs within a period of six weeks from today. Payment of costs shall be the condition precedent;

c) If compliance is not made, the order impugned in this writ petition will stand;

d) If compliance is made, the Appellate Court will proceed with the hearing of the appeal. Hearing of the appeal is expedited and the same shall be concluded preferably before 30thSeptember 2007. All contentions of both sides in appeal are expressly kept open;

e) Rule is made absolute in above terms.

f) All concerned to act on an ordinary copy of this order duly authenticated by the Registry of Bombay High Court.

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(A.S.OKA, J.)